

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE:	CASE No.: 19-06685 (BKT)
HECTOR LUIS MARTINEZ MARTINEZ	CHAPTER 13
Debtor	
MONEY EXPRESS	(X) 11 U.S.C. §1325(a)(4), on <i>Liquidation value test</i>
Movant	

**OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN**

TO THE HONORABLE COURT:

Comes now MONEY EXPRESS through its undersigned counsel and respectfully alleges and prays:

**I. JURISDICTION**

1. This Honorable Court has jurisdiction over the instant case pursuant to 28 USC §1334 and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, 11 U.S.C. §1322(a)(1), on *Contents of a plan (income)*, 11 U.S.C. §1325 (b)(1)(B) and (b)(4) on *disposable income* and 11 U.S.C. §1325(a)(4), on *Liquidation value test*.

**II. FACTS**

2. Debtor filed a voluntary petition under the provisions of Chapter 13 of the Bankruptcy Code (11 U.S.C. §1301 *et seq.*) on November 14, 2019.

3. Movant filed an unsecured proof of claim in the amount of \$4,999.97 regarding account no. 1372, identified as no. 2 at Claims' Register.

4. Debtor's chapter 13 plan dated November 14, 2019 (docket no. 3) pays unsecured creditors in pro-rata basis.

5. According to trustee's unfavorable recommendation dated January 29, 2019 (docket no. 13), the proposed plan (docket no. 3) fails to comply with the *liquidation value test*.

6. Movant joins trustee's objection (docket no. 13) to the confirmation of the plan dated November 14, 2019 (docket no. 3) because it fails to comply with the requirements of 11 U.S.C. §1325(a)(4), known as 'liquidation value test'.

In compliance with Local Bankruptcy Rule 9013-2 (a), Firstbank PR hereby submits its motion or response accompanied by a supporting memorandum that contains the points and authorities in support of its position, together with the pertinent affidavits and/or documents.

### III. DISCUSSION

- **LIQUIDATION VALUE TEST**

7. Section 1325(a)(4) of the Bankruptcy Code (11 U.S.C.) requires that “the value as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this title on such a date”. See Lundin, Keith M., on Chapter 13 Bankruptcy: Second Edition, Volume 2, on *Best-Interest-of-Creditors-Test*.

8. To accomplish confirmation the debtor must evidence “to be able to make all payments under the plan and to comply with the plan”. Feasibility, Keith M. Lundin on Chapter 13 Bankruptcy. Feasibility is a fact-bound concept. At its simplest, feasibility requires that the debtor’s income to exceed expenses by an amount sufficient to make the payments proposed under the plan. *Id.* When debtor’s budget will not support the proposed payments into the plan, the plan is not feasible and confirmation must be refused. *Id.*

9. To determine compliance with the test, the chapter 13 Trustee must endure the exercise of a hypothetical liquidation of the debtor’s estate under chapter 7 on the “effective date of the plan” must be compared to the value on “the effective date of the plan” of what the debtor proposes to distribute to the holders of allowed unsecured claims. Thus, a mathematical calculation must be made of the value of what would be available for distribution to unsecured claim holders in a chapter 7 case. To that effect, the debtor’s distribution to unsecured claim holders must be “present valued” [discounted] as of the effective date of the chapter 13 plan. Chapter 13: Bankruptcy, Volume 2, Lundin, Keith M. On *Best-Effort-of-Creditors Test: - Mathematical Considerations*.

10. The phrase “effective date of the plan” has not been defined by the Code. Nonetheless, it has been accepted that “the effective date of the plan” means the date of confirmation. Therefore, for purposes of the liquidation value of the estate mathematical analysis under the

Objection to confirmation  
FIRSTBANK, Puerto Rico

3

*Best Interest of Creditors Test* any property or substantial asset which the debtor's acquired after the date of the petition which increases the appreciation of the estate is accountable for the mathematical analysis to ascertain a higher distribution among the general unsecured creditors. *In re Rake vs. Wade*, 113 S. Ct. 2181 (1993).

11. Likewise, where the liquidation value of the estate would be sufficient to produce a dividend in a Chapter 7 case, then the value as of the effective date of the property to be distributed under the Chapter 13 plan must exceed the amount that the unsecured claim holders would receive in a hypothetical Chapter 7 case. And where the liquidation would result in the full payment of unsecured claims on the effective date of the plan, 11 U.S.C. §1325(a)(4) requires unsecured claim holders to be paid in full with interest through the Chapter 13 plan.

#### IV. ALLEGATIONS

12. Movant filed an unsecured proof of claim in the amount of \$4,999.97 regarding account no. 1372, identified as no. 2 at Claims' Register.

13. Debtor's chapter 13 plan dated November 14, 2019 (docket no. 3) pays unsecured creditors in pro-rata basis.

14. In order for trustee and appearing creditor to verify plan's compliance with the liquidation value test Debtor must amend Schedule "A-B" to disclose a 2006 Honda Accord in his name.

15. For the above discussed reasons, Money Express does not accept the proposed plan.

WHEREFORE, Movant respectfully requests this Honorable Court to grant this motion and deny the confirmation of the proposed plan.

#### NOTICE

Within fourteen (14) days after service as evidenced by the certification, and additional three (3) days pursuant to Fed. R. Bankr. P. 9006 (f) if you were served by mail, any party against whom this paper has been served, or any party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's Office Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise. Local Bankruptcy Rule 9013-1 (c)(1).

RESPECTFULLY SUBMITTED.

Objection to confirmation  
FIRSTBANK Puerto Rico

4

In San Juan, Puerto Rico, this 31<sup>st</sup> day of January, 2020.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy was served by CM/ECF at the authorized address to: all creditors; Alejandro Oliveras Rivera, Esq., Chapter 13 Trustee; Carlos A. Ruiz Rodriguez, Esq., Debtor's attorney and to debtor by regular mail to the address of record: Urb. Monte Alto, #162 calle 6, Gurabo, P.R. 00778, as per the attached *List of Creditors*.

//s// Maricarmen Colón Díaz

**MARICARMEN COLON DIAZ**, Esq.

Attorney for Movant - USDC 211410

MARIA M. BENABE RIVERA— USDC 208906

P.O. Box 9146, Santurce, P.R. 00908-0146

Centro de Servicios al Consumidor (248)

1130 Muñoz Rivera Avenue, San Juan, P.R.

Tel. (787) 729-8135 / Fax (787) 729-8276

[maricarmen.colon@firstbankpr.com](mailto:maricarmen.colon@firstbankpr.com)

Label Matrix for local noticing  
0104-3  
Case 19-06685-BKT13  
District of Puerto Rico  
Old San Juan  
Tue Jan 28 17:08:00 AST 2020

AMEX DEPARTMENT STORES  
PO BOX 8218  
MASON, OH 45040-8218

BANCO SANTANDER PUERTO RICO  
PO BOX 362589  
SAN JUAN, PR 00936-2589

CRIM  
PO BOX 195387  
SAN JUAN, PR 00919-5387

FreedomRoad Financial c/o Wayfinder BK, LLC  
PO Box 64090  
Tucson, AZ 85728-4090

IRS  
PO BOX 9024140  
SAN JUAN, PR 00902-4140

(p)JEFFERSON CAPITAL SYSTEMS LLC  
PO BOX 7999  
SAINT CLOUD MN 56302-7999

MONEY EXPRESS  
PO BOX 11890  
SAN JUAN, PR 00922-1890

(p)PENTAGON FEDERAL CREDIT UNION  
ATTN BANKRUPTCY DEPARTMENT  
P O BOX 1432  
ALEXANDRIA VA 22313-1432

Synchrony Bank  
c/o of PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021

ISLAND PORTFOLIO SERVICES LLC AS SERVICER OF  
PO BOX 361110  
SAN JUAN, PR 00936-1110

BANCO POPULAR DE PR  
PO BOX 366818  
SAN JUAN, PR 00936-6818

CITICARDS CBNA  
PO BOX 6190  
SIOUX FALLS, SD 57117-6190

DEPARTAMENTO DE HACIENDA  
PO BOX 9024140  
SAN JUAN, PR 00902-4140

GURA COOP  
PO BOX 678  
GURABO, PR 00778-0678

ISLAND FINANCE  
PO BOX 71504  
SAN JUAN, PR 00936-8604

LVNV Funding, LLC  
Resurgent Capital Services  
PO Box 10587  
Greenville, SC 29603-0587

MONEY EXPRESS  
PO BOX 9146  
SAN JUAN, PR 00908-0146

SYNCB/JCPENNEY MCC  
PO BOX 956007  
ORLANDO, FL 32896-0001

US DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20530-0001

US Bankruptcy Court District of P.R.  
Jose V Toledo Fed Bldg & US Courthouse  
300 Recinto Sur Street, Room 109  
San Juan, PR 00901-1964

BANCO POPULAR DE PUERTO RICO  
BANKRUPTCY DEPARTMENT  
PO BOX 366818  
SAN JUAN PR 00936-6818

CITICARDS CBNA  
PO BOX 6241  
SIOUX FALLS, SD 57117-6241

FREEDOMROAD FINANCIAL  
1515 W 22ND ST  
OAK BROOK, IL 60523-2007

INTERNAL REVENUE SERVICE  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

Island Portfolio Services, LLC as servicer o  
PO BOX 361110  
San Juan PR 00936-1110

MONEY EXPRESS  
CONSUMER SERVICE CENTER  
BANKRUPTCY DIVISION (CODE 248)  
PO BOX 9146 SAN JUAN PR 00908-0146

PENTAGON FEDERAL CREDIT  
PO BOX 247009  
OMAHA, NE 68124-7009

SYNCB/SAMS  
PO BOX 965005  
ORLANDO, FL 32896-5005

ALEJANDRO OLIVERAS RIVERA  
ALEJANDRO OLIVERAS CHAPTER 13 TRUS  
PO BOX 9024062  
SAN JUAN, PR 00902-4062

CARLOS A RUIZ RODRIGUEZ  
PO BOX 1298  
CAGUAS, PR 00726-1298

HECTOR LUIS MARTINEZ MARTINEZ  
URB MONTE ALTO  
#162 CALLE 6  
GURABO, PR 00778

MONSITA LECAROS ARIBAS  
OFFICE OF THE US TRUSTEE (UST)  
OCHOA BUILDING  
500 TANCA STREET SUITE 301  
SAN JUAN, PR 00901

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Jefferson Capital Systems LLC  
Po Box 7999  
Saint Cloud Mn 56302-9617

PENTAGON FEDERAL CREDIT UNION  
PO BOX 1432  
Alexandria, VA 22313

End of Label Matrix	
Mailable recipients	32
Bypassed recipients	0
Total	32